

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) CAUSE NO. 1:03-cr-00118-SEB-MJD
DAVID LYNN MOORE,) - 01
Defendant.)

REPORT AND RECOMMENDATION

On January 14, 2025, the Court held a hearing on the Petition for Warrant or Summons for Offender under Supervised Release filed on August 19, 2023, and order granting Petition on August 30, 2024. [Filing Nos. 24, 25.] Defendant, David Lynn Moore appeared in person with his appointed counsel Gwendolyn Beitz. The government appeared by Adam Eakman, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer James H. Thomas.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant of his rights and provided him with a copy of the petition. Defendant orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant admitted violation numbered 4. [Filing Nos. 24, 25.] Government orally moved to withdraw the remaining violations numbered 1, 2, and 3, which motion was granted by the Court.
3. The allegation to which Defendant admitted, as amended in the petition, is:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
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- 4 "The defendant shall not commit another federal, state, or local crime."

Mr. Moore now has a conviction as he has pled guilty to one count of Possession of Child Pornography, and was sentenced under case number 49D30-2408-F5-022958, in Marion County, Indiana.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is VI.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 21 to 24 months imprisonment.

5. The parties jointly recommended a sentence of 21 months imprisonment at the Bureau of Prisons with 12 months supervised release to follow.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of 21 months imprisonment at the Bureau of Prisons with 12 months supervised release to follow. In addition to the mandatory conditions of supervision, the following conditions of supervised release will be imposed:

1. You shall report to the probation office in the judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.

6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement.
13. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.
14. You shall pay the costs associated with the following imposed conditions of supervised release/probation, to the extent you are financially able to pay: psychosexual treatment, polygraph testing, and computer monitoring systems. The probation officer shall determine your ability to pay and any schedule of payment. Justification Conditions 1-14: These conditions are recommended to assist the probation officer in supervising the offender in the community, and to ensure the safety of the community.
15. All employment shall be approved in advance by the probation officer.
16. You shall not have unsupervised meetings, activities, or visits, or intentional communications with any minor unless they have been disclosed to the probation officer and approved by the court. You shall not have supervised meetings, activities, visits, or intentional communications with any minor unless they have been approved by the probation officer. Before you may request approval for such meetings, activities, visits, or intentional communications (unsupervised or supervised), you must notify the person(s) having custody

of any such minor(s) about the conviction in this case and the fact that you are under supervision.

17. You shall not be employed in any position or participate as a volunteer in any activity that involves unsupervised meetings, intentional communications, activities, or visits with minors except as disclosed to the probation officer and approved by the court.

18. You shall not participate in unsupervised meetings, intentional communications, activities, or visits with persons you know to be a registered sex offender or to have been convicted of a felony sex offense involving an adult or minor, including any child pornography offense, except as disclosed to the probation officer and approved by the court. This condition is not intended to prevent you from participating in treatment programs or religious services with felons in such programs/services so long as the activity has been disclosed as described above.

19. You shall not enter or remain at a place for the primary purpose of observing or contacting children under the age of 18.

20. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

21. You shall not possess any child pornography or visual depictions of child erotica or nude minors. Any such material found in your possession shall be considered contraband and will be confiscated by the probation officer.

22. You shall participate in a program of treatment for sexual disorders, including periodic polygraph examinations, as directed by the probation officer. The treatment provider should determine the type and timing of such polygraph examinations. The court authorizes the release of the presentence report and available psychological evaluations to the treatment provider, as approved by the probation officer.

23. You shall consent, at the direction of the probation officer, to having installed on your computer(s), telephone(s), electronic devices, and any hardware or software, systems to monitor your use of these items. Monitoring will occur on a random and/or regular basis. You will warn other occupants or users of the existence of the monitoring hardware or software. To promote the effectiveness of this monitoring, you shall disclose in advance all cellular phones, electronic devices, computers, and any hardware or software to the probation officer and may not access or use any undisclosed equipment. Justification Conditions 15-23: These conditions are recommended given Mr. Moore's instant offense is for producing and

possessing child pornography. The conditions will help the probation officer to monitor the offender in the community, would be beneficial in his recovery, aid in his relapse prevention plan, and would help to hold him accountable.

24. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer.

25. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods. Justification Conditions 24-25: These conditions are recommended given Mr. Moore's past substance abuse history. The conditions will help the probation officer to monitor the offender in the community, would be beneficial in his recovery, aid in his relapse prevention plan, and would help to hold him accountable.

Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge.

The parties waived the fourteen-day period to object to the Report and Recommendation.

Date: 1/14/2025

7-13L

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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